

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT
CENTRAL DIVISION

2003 JUN 25 AM 10:43

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THERESA M. ZEIGLER, individually;
THERESA M. ZEIGLER as mother and
next friend of MADISEN ZEIGLER,

Plaintiff,

vs.

FISHER-PRICE, INC.

Defendant.

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BY pm

CASE NO.C01-3089PAZ

PLAINTIFF'S RESISTANCE TO
DEFENDANT'S MOTION TO
PRECLUDE TESTIMONY OF
BRUCE WANDELL

COMES NOW Plaintiff and in resistance to Defendant's motion to preclude testimony of Bruce Wandell states:

1. Bruce Wandell is a trained fire investigator and conducted a very detailed investigation of this fire scene, which investigation is set forth in the first 120 pages of his deposition. At page 140 of his deposition at lines 13-20, Mr. Wandell outlines his "scientific method" of conducting a fire scene investigation. It is interesting that this motion to preclude testimony is based on his refusal to adopt the NFPA 921 as a "bible" as opposed to a "guide". The procedure he outlines at page 140 lines 13-20 and the procedure he details in the first 120 pages of his deposition specifically follows the guidelines of NFPA 921.

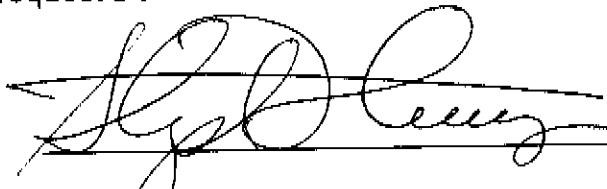
2. Mr. Wandell was careful not to form an opinion prior to his investigation, which is very opposed to the methodology used by James Finneran who is the expert of Fisher Price, Inc. As shown in the deposition of Theresa Zeigler at page 77 lines 11-25, page 78 lines 1-3, page 79 lines 21-25, and page 80 line 1 Mr Finneran had established his opinion

before he ever commenced his investigation of the fire scene.

3. As indicated by the depositions of Wandell and Finneran their procedures were similar, absent the preinvestigation opinion by Finneran. Any ruling barring Wandell would apparently apply to Finneran as well.

4. Both of these investigations commenced outside and worked from the least damaged area to the greatest damage. The opinions differ on source by the width of the garage. Each has a reasoned opinion and should be allowed to explain the opinion

WHEREFORE, Plaintiff request Defendant's motion be overruled.



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Original filed.
Copy to:
Kevin Reynolds
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CERTIFICATE OF SERVICE

The undersigned certifies that on 6-24-03
the foregoing instrument was served upon all parties to the
above cause by depositing a copy thereof in the U.S. Mail
postage prepaid in envelopes addressed to each of the
attorneys of record herein at their respective addresses
described in the pleadings.

Dana Anderson

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT
CENTRAL DIVISION

COPY

THERESA M. ZEIGLER, individually;
THERESA M. ZEIGLER as mother and
next friend of MADISEN ZEIGLER,

Plaintiffs,

vs.

No. C01-3089-MWB

MATTEL, INC., a/k/a
MATTEL RS, INC. d/b/a
FISHER-PRICE,

DEPOSITION OF

Defendant.

THERESA ZEIGLER

The deposition of Theresa Zeigler, taken on
behalf of the Defendant, before Karen L.
Hargens, Certified Shorthand Reporter and Notary
Public, commenced at 1:37 p.m., the 21st of
August, 2002, at the law offices of Cornwall,
Avery, Bjornstad & Scott, Spencer, Iowa.

APPEARANCES:

Mr. Stephen F. Avery, Attorney at Law
(Cornwall, Avery, Bjornstad & Scott), 407 Grand
Avenue, P.O. Box 999, Spencer, Iowa 51301

for the Plaintiffs;

Mr. Kevin M. Reynolds, Attorney at Law
(Whitfield & Eddy), 317 Sixth Avenue, Suite
1200, Des Moines, Iowa 50309-4195

for the Defendant.

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1 Q And neither you nor Madisen was present at the
2 house when the fire started; correct?
3 A When it started, that's correct.
4 Q And does Madisen see a pediatrician, or does she
5 see a family practice doctor?
6 A Family practice doctor.
7 Q And who is Madisen's doctor?
8 A Dr. Stangl. She also sees Dr. Jorgensen because
9 she's had quite a bit of trouble with her ears.
10 Q Is Jorgensen like an ENT?
11 A Yes.
12 Q Ear, nose and throat specialist?
13 A Yes.
14 Q And then Stangl is a family practice doctor?
15 A Yes. He is in Estherville.
16 Q Are they both in Estherville?
17 A Jorgensen is located here in Spencer.
18 Q Has she had to have ear tubes?
19 A Yes. She just got her second set earlier this
20 year.
21 Q Do you remember when she had her first set?
22 A When she was 4.
23 Q Has Madisen seen any other doctors other than
24 Dr. Stangl or Dr. Jorgensen?
25 A No, she hasn't.

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1 Q Has Dr. Stangl --
2 A I take that back. She did see Jodi Haugen who
3 is a physician's assistant at the Estherville
4 clinic.
5 Q Is that the same office as Dr. Stangl?
6 A Yes, it is.
7 Q And what did the physician's assistant see
8 Madisen for, do you know?
9 A I think a cold.
10 Q Has Madisen or you received any medical
11 treatment for emotional distress or
12 psychological injury or problems of that type
13 related to this fire incident?
14 A I visited with Jodi Haugen off and on about
15 different things. I have taken an
16 antidepressant for quite a while, even prior to
17 the fire. But we had talked about going off of
18 it and so forth and opted not to do that at that
19 time because of the trauma of the fire. She
20 advised me not to at that time.
21 Q Do you presently take any antidepressant?
22 A Yes, I do.
23 Q Is that a prescription medicine?
24 A Yes.
25 Q What medicine is it?

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1 A Paxil.
2 Q And when were you first prescribed that?
3 A I would have to go back and check. I don't
4 know.
5 Q But it was prior to the fire?
6 A It was prior to the fire.
7 Q Do you know what dosage you take?
8 A 40 milligrams.
9 Q Do you take anything else for -- you know, as an
10 antidepressant or anxiety or whatever?
11 A No. That's the only thing.
12 Q Does Madisen take anything?
13 A No, she doesn't.
14 Q Have you specifically been prescribed anything
15 to help alleviate emotional distress or mental
16 distress or things of that nature related to
17 this fire?
18 A Not specifically, no.
19 Q And same answer for Madisen?
20 A Correct.
21 Q In the interrogatory answers -- I'm switching
22 gears here -- there's a reference to a brief
23 conversation you had with an investigator that
24 came out to the fire scene. And I think his
25 name was Jim Finneran, but I don't know if you

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1 would remember his name or not.
2 A I did not remember his name, but I know who
3 you're talking about.
4 Q He was there on behalf of Fisher-Price or
5 Mattel, whatever you want to call it. Tell me
6 as specifically as you can, Theresa, what you
7 remember about that conversation.
8 A It was a short conversation.
9 Q I think this was actually in June a few days
10 after the fire?
11 A Uh-huh. (Witness indicated affirmatively.)
12 After introductions -- after he introduced
13 himself -- and I'm paraphrasing. I'm not
14 quoting. I think I'm pretty close to quote on
15 the first part. He said, so what makes you
16 think -- what makes you think our product caused
17 your fire? And what alarmed me -- or what noted
18 my attention to this more than his words was his
19 tone. It was a very sarcastic tone, in my
20 opinion. And I said, well, I'm just going on
21 what the firemen have told me and the fire
22 investigator. And he said -- his next phrase
23 then -- and I'm paraphrasing -- was, I think my
24 visit or I think our findings will find
25 something else or that they're wrong or we'll

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1 find something else basically. That's what he
2 was saying, but I can't quote him exactly. But
3 that is what I understood him to say.
4 Q And I think that's consistent with what you had
5 stated in the interrogatories. And let me just
6 read this answer into the record here. It's
7 Answer to Interrogatory No. 1. And it states
8 and I quote, "The only conversation with a
9 representative of Defendant was with James
10 Finneran. He came to inspect the fire scene.
11 The location was in my driveway a few days after
12 the fire." Is that where you recall talking
13 with him?
14 A Yep.
15 Q "He had not yet gone onto the fire scene. But
16 his comment was, quote, 'What makes you think
17 our product caused your fire?'," end quote. In
18 your answer to interrogatory you've got that in
19 quotes. But as you've stated here today, you're
20 paraphrasing him as best you can recall?
21 A However, that statement is pretty accurate to a
22 quote, I mean, the first thing he said, because
23 it kind of stuck in my mind. Not only his
24 words, but his tone.
25 Q And it may not have been the exact words that he

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1 used?
2 A That's correct.
3 Q But it gives you a feel for his intonation or
4 his tone?
5 A Correct.
6 Q And then I'll continue reading here. "That was
7 the first thing he said. He said this in a
8 sarcastic manner." And I think you've told us
9 about that. "I then repeated to him what the
10 firemen had told me. He then said, quote, 'My
11 feelings are that my findings will indicate that
12 our product did not cause the fire'," end quote.
13 And then on your interrogatory answer you've got
14 paraphrased there.
15 A Yeah.
16 Q So again, those may not have been the exact
17 words he used, but that's the sum and substance
18 of what he was saying; is that correct?
19 A That is correct.
20 Q And then to continue on to finish the answer,
21 "All of this was prior to his setting foot on
22 the fire scene."
23 A That is true. He was standing beside his car
24 putting on his gloves at the time.
25 Q He had just arrived?

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1 A Yes.
2 Q Can you tell me, Theresa, as best you can recall
3 what the firemen told you in terms of the cause
4 of the fire? And you may have had several
5 different conversations with different guys.
6 But I just need to find out as much as I can.
7 A First thing that I remember being told is when
8 the fire was out -- pretty much out, I walked
9 around into my driveway at that time looking
10 into the garage -- looking to the west into the
11 garage. And the fireman -- and I believe Randy
12 Cody was one of them -- had a light and shined
13 it and said, do you recall what was sitting
14 right there? And I said, yeah, that's where my
15 daughter's Barbie Jeep was parked. And he said,
16 well, we believe that's where the fire started.
17 And I said, I just plugged it in earlier that
18 day to charge it up. And that was the first
19 time that I was told -- that I recall being told
20 by a fireman that that's where the fire had
21 started and that's what they thought caused the
22 fire.
23 Q And you mentioned Randy Cody?
24 A Uh-huh. (Witness indicated affirmatively.)
25 Q Did you know him at all before this fire?

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1 A No, I did not.
2 Q Did you have any other conversations later? It
3 may have been a few days after or --
4 A I know after Bruce Wandell came, I visited with
5 him. And I was on the site when he was doing a
6 lot of the investigation. And I asked him
7 questions about different things, and he
8 answered my questions very politely.
9 Q Who did you understand him to be, Theresa?
10 A A fire investigator representing Allied
11 Insurance.
12 Q Do you remember what you asked him?
13 A I asked him what would indicate the fire started
14 there. And he showed me different things, the
15 charring of the studs in the wall and just
16 different things. Some of it I knew from prior
17 knowledge or whatever. But it was
18 interesting -- I was just more interested, I
19 guess, in what he was doing. He very politely
20 was just answering my questions.
21 Q Do you recall asking him anything other than,
22 you know, what would indicate that the fire
23 started here? I mean, specifically do you
24 remember any questions that you posed to him?
25 A I remember one question I asked him. He was